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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 CHARLES V. FARNSWORTH,) CASE NO. C07-0206-RSM
09)
Plaintiff,)
10)
v.)
11) ORDER DISMISSING § 1983
WASHINGTON STATE DEPARTMENT) ACTION
OF CORRECTIONS,)
12)
Defendant.)
13 _____)

14 The Court, having reviewed the Report and Recommendation (“R&R”) of the
15 Honorable Mary Alice Theiler, United States Magistrate Judge, the Objections thereto, and the
16 balance of the record, does hereby ORDER:

17 (1) The Court adopts the Report and Recommendation with the following additional
18 comments. In his Objections to Judge Theiler’s R&R, plaintiff argues that Case No. C05-
19 5239FDB, *Farnsworth v. Carter*, cannot be used as a strike against him under 28 U.S.C.
20 § 1915(g) because it was not brought before a “court of the United States.” (Dkt. #8 at 2).
21 Specifically, plaintiff argues that because he originally brought that case in state court, and
22 subsequently sought remand from federal court, the case cannot be used as a strike for

01 purposes of section 1915(g). Plaintiff's argument is misguided. While he may not have
02 intended to bring an action before a Court of the United States, the unfortunate consequence of
03 bringing a federal civil rights action in state court is that it generally may be removed by
04 defendants to federal court, thereby subjecting a plaintiff to the three strikes rule.¹
05 Accordingly, the Court is not persuaded that Case No. C05-5239FDB should not be counted
06 as a strike under section 1915(g).

07 (2) The Complaint and this § 1983 action are DISMISSED without prejudice.

08 (3) Plaintiff's application for leave to proceed *in forma pauperis* is DENIED as moot.

09 (4) The Clerk is directed to send copies of this Order to plaintiff and to Judge Theiler.

10 DATED this _9_ day of April, 2007.

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12 RICARDO S. MARTINEZ
13 UNITED STATES DISTRICT JUDGE
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22 ¹ The apparent unfairness of this consequence is addressed in the dissenting opinion in
Abdul-Akbar v. McKelvie, 239 F.3d 307, 330-31 (3d Cir. 2000).